IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

MONDAY, THE THIRTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 15992 of 2004

Between:
Thotempudi Venkaiah, S/o Chenchaiah,
R/o Kakuturivatipalem, Tangutur Mandal, Prakasham District, Andhra Pradesh.

..... PETITIONER

AND

1 Sri Varaha Lakshminarasimhaswamy Devasthanam, Rep. by its Executive
Officer, Singarayakonda, Singarayakonda Mandal, Prakasham District, A.P.
2 Sri Ronda Ramakrishna Reddy, Retired Executive Officer,
C/o Executive Officer, Sri Varaha Lakshminarasimhaswamy Devasthanam,
Singarayakonda, Singarayakonda Mandal, Prakasam District, A.P.
3 Pirigiti Venkateshwarlu, S/o Kotaiah,
R/o Kakuturivaripalem, Tangutur Mandal, Prakasam District, A.P.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ or order or direction under Article 226 of the Constitution of India, particularly one in the nature of Writ of Mandamus, declaring the action of the first respondent in auctioning the lease hold rights of the land in Survey No. 23/1 in an extent of Ac. 4-65 Cents of Jayavaram Village of Tangutur Mandal, Prakasham District, A.P. on 30-8-2004 as unfair, arbitrary, and illegal after calling for the records.

Counsel for the Petitioner: MR.NUTHALAPATI KRISHNA MURTHY

Counsel for the Respondent No.1: SMT.N.INDRANI

Counsel for the Respondent Nos.2 and 3: ---

The Court at the admission stage made the following:

ORDER:

Petitioner seeks a declaration that the action of the first respondent in auctioning the leasehold rights in respect of the land in Survey No.23/1 to an extent of Ac.4.65 cents of Jayawaram village, Tangutur Mandal, Prakasam District, is arbitrary and illegal.

The petitioner claims to be the cultivating tenant in respect of Ac.4.65 cents of land situated in Survey No.23/1 of Jayawaram villge, Tangutur Mandal, Prakasam District, belonging to the first respondent-Devasthanam for the last about 30 years. He also states that apart from the said land, he is also in possession of small extent of land of his own. It appears that an enquiry has been conducted as to the status of the petitioner and after conducting due enquiry, the Assistant Commissioner of Endowments held that the petitioner is not a landless poor person and therefore, he

is not entitled to the benefit of Section 82(2) of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for short 'the Act'). Against the said order, the petitioner preferred an appeal before the Regional Joint Commissioner of Endowments, Tirupathi, Chittoor District. It appears that pending the said appeal, the first respondent herein proposed to conduct auction in respect of the leasehold rights of the land in question. At that stage, the petitioner filed W.P.No.19131 of 2003, which was disposed of by this Court by order dated 10.09.2003 with a direction that the Regional Joint Commissioner of Endowments shall dispose of the appeal pending on his file as expeditiously as possible, preferably within a period of two weeks and till the disposal of the appeal, status quo obtaining as on the date of the order shall be maintained. Subsequently, the appeal was disposed of by the Regional Joint Commissioner of Endowments on 17.05.2004 confirming the order of the Assistant Commissioner of Endowments. It is not in dispute that even prior to that in the year 2003 when the auction was conducted, the petitioner participated and he was the highest bidder for a sum of Rs.26,100/-. The petitioner states that in pursuance thereof, he has deposited a sum of Rs.10,000/- and continued in possession and enjoyment

of the land in question and raised the Eucalyptus plantation. While so, the 1st respondent conducted fresh auction on 30-08-2004, in which the third respondent was declared as the highest bidder. The petitioner states that he came to know about the said auction only on 2-9-2004 and when there was a threat of dispossession of the petitioner, the present writ petition has been filed seeking the above relief.

I have heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the first respondent.

The learned counsel for the petitioner states that the entire action of the first respondent in conducting the auction in respect of the leasehold rights of the land in possession of the petitioner without any notice to him and attempting to dispossess the petitioner in spite of the fact that Eucalyptus plantation ripe for cutting was standing thereon, is arbitrary and illegal. He contends that that even as per the auction conditions, the first respondent is not entitled to dispossess the petitioner without obtaining necessary approval from the Assistant Commissioner of Endowments, who is the competent authority under the statute.

On the other hand, the learned Standing Counsel appearing for the first respondent contends that the

auction has been conducted following due process of law and in pursuance thereof, the highest bidder has already been put in possession of the land in question and whatever standing crop was there on the land was already cut. Thus, according to the learned counsel nothing survives for adjudication in this writ petition and the same is liable to be dismissed as infructuous.

It is also to be noted that a counter affidavit on behalf of the first respondent is filed stating that the petitioner failed to deposit the balance of the lease amount in spite of the notice issued to the petitioner. It is stated that the notice sent to the petitioner was returned with an endorsement “Addressee avoided to take, so return to sender”. In the circumstances, since the petitioner has not accepted the notice and failed to pay the auction amount, auction has been conducted on 30.08.2004 in which one Sri Pidikiti Venkateswarlu was declared as the highest bidder for a sum of Rs.23,100/- and that he was already put in possession of the said land. The contents of the counter affidavit remains unrebutted since the petitioner did not choose to file any reply affidavit.

Having regard to the pleadings of the respective parties and the other material available on record, it is clear that as on today the petitioner has already been

dispossessed. Even assuming that there was a standing crop, since the same has already been cut, and particularly in view of the other disputed questions that arise for consideration, such as whether there was valid service of notice on the petitioner and whether the petitioner committed default in payment of the bid amount, I am of the view that the relief as prayed for cannot be granted to the petitioner in summary proceedings under Article 226 of the Constitution of India.

In the circumstances, I deem it appropriate to dispose of the writ petition with a direction to the Assistant Commissioner of Endowments, Ongole to conduct the necessary enquiry into the validity of the auction conducted by the first respondent on 30.08.2004 and to pass appropriate orders in accordance with law as expeditiously as possible, preferably within a period of four weeks from the date of receipt of a copy of this order after affording due opportunity to all the parties concerned. It is open to the petitioner to make a representation before the Assistant Commissioner of Endowments raising all the objections with regard to the auction conducted on 30.08.2004. It is also open to him to raise a claim for damages in respect of the plantation

raised by him which was allegedly cut by the third respondent / highest bidder in the auction held on 30.08.2004 in which event the same shall be considered by the Assistant Commissioner of Endowments, Ongole and appropriate orders shall be passed in accordance with law.

Accordingly, the writ petition is disposed of. No costs.

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13.09.2004

Note: Office is directed to communicate a copy of this order to the

Assistant Commissioner of Endowments, Ongole.

(b/o)

VGB

To

1 The Executive Officer, Sri Varaha Lakshminarasimhaswamy

Devasthanam,
Singarayakonda, Singarayakonda Mandal, Prakasham District, A.P.
2 The Assistant Commissioner of Endowments, Ongole.
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